LIBRARY
SUPREME COURT, U.S.

MAY 19 1964

In The

# Supreme Court of the United States

October Term, 1963

No. 468

---

THE ATLANTIC COAST LINE RAILROAD COMPANY,
*Appellant,*

vs.

THE STATE OF ALABAMA, INTERSTATE COMMERCE COMMISSION and CENTRAL OF GEORGIA RAILWAY COMPANY,
*Appellees.*

---

## MOTION OF THE ATLANTIC COAST LINE RAILROAD COMPANY FOR ADVANCEMENT

---

WILLIAM A. BARRETT
FRANK B. WEBB
Atlanta, Georgia

EDWIN W. LEATHERS
Atlanta, Ga.

EDWIN W. LEATHERS,
70 Pine St.
Atlanta, Ga.
*Counsel for Appellant*

WILSON - EPES PRINTING CO. - RE 7-6003 - WASHINGTON 1, D. C.

IN THE

# Supreme Court of the United States

October Term, 1952

No. 488

THE CALLANAN ROAD IMPROVEMENT COMPANY,
*Appellant,*

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and CORNELL STEAMBOAT COMPANY,
*Appellees.*

## PETITION OF THE CALLANAN ROAD IMPROVEMENT COMPANY FOR REHEARING

Pursuant to the provisions of Rule 33(1) of the Revised Rules of this Court, appellant, The Callanan Road Improvement Company, files its petition for rehearing of the opinion and judgment of this Court delivered May 4, 1953.

That decision is based on the erroneous statement by the Court that appellant has "admitted for the purposes of this case that the limitations placed by the order of March 7, 1944 upon the original certificate issued to

Hutton in 1942 had the effect of restricting his operations to freightage and deny him the right to engage in tow age" (p. 5).

Appellant at no stage of the proceeding made any such admission but on the contrary, urged in its pleadings on brief and in argument, that Hutton's original certificate granted him the right to engage in all forms of related transportation including towing, and that the amended certificate of 1944 adding description of equipment was identical in effect with the original certificate. The amended certificate was not modified as to nature or type of operation on its transfer to appellant and at that time no attempt was made by either the Commission or the protestants to eliminate "towage" or to confine the certificate to freightage. The first time that appellant or its predecessors was subjected to any attempt on the part of the Commission to modify or restrict the original certificate or the amended certificate, was in connection with the construction of the tariff of the appellant currently in issue.

Because of the erroneous finding in the opinion that appellant has admitted restriction against engaging in towage in the amended certificate of March 7, 1944, the conclusion is reached that appellant is foreclosed from challenging constructions now placed by the Commission upon the 1944 certificate. The opinion suggests that there is some contradiction between appellant's position in the transfer proceedings of 1947 and its present position as to the Commission's power to modify the certificate. There is none. Appellant then and now asserts that the Commission's jurisdiction as exemplified in its orders cannot be attacked collaterally. We agree that "the appellant must take the certificate as it stood at the time it sought and received the Commission's approval for its

transfer." We do not dispute the Commission's power to issue the certificate in its present form and as it existed prior to the time the appellant sought its transfer. We do insist that the original certificate and the amended certificate under the decision of this Court in *United States* v. *Seatrain Lines*, 329 U.S. 423, 91 L.Ed. 396, granted appellant and its predecessors the right to move commodities generally as a common carrier with non-self-propelled vessels towed by self-propelled vessels without distinction between freightage and towage as these services were subsequently construed.

Since it appears that the majority of the Court at the time of decision was misled into believing that appellant had admitted that the change made by the order of March 7, 1944 had the effect of restricting his operations to freightage, it is understandable that it did not consider in its opinion the major issues in the proceeding, to wit, that the tariff upon which the Commission acted did not provide for towage but rather for freightage, and that the Commission cannot now in the guise of construing a tariff, revoke or modify the outstanding certificate of appellant without legislative authority.

## CONCLUSION

This case was argued immediately following the conclusion of protracted argument in the Texas explosion case. There were numerous questions from the bench. The time was short for an appeal embracing so many administrative and jurisdictional issues and the Court had before it the opinion of the District Court which completely confused the presentation of fact and the positions of the parties. The effect of the opinion upon the appellant and, indeed, upon the authority of the Interstate Commerce Commission in its entire regulation of